

HOUSE BILL 3462

By Mumpower

AN ACT to amend Tennessee Code Annotated, Title 7,
Chapter 52; Title 7, Chapter 86 and Title 65,
relative to communications services.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Section 65-4-101(1), is amended by deleting the language "paging service, or communications service" and by substituting instead the language "paging service, interconnected VoIP service or communications service".

SECTION 2. Tennessee Code Annotated, Section 65-4-101, is amended by deleting subdivision (5) and by substituting instead the following:

(5) "Interconnection services" means intrastate switched access telecommunication services that allow a telecommunications service provider to interconnect on a non-dedicated basis with the networks of all other telecommunications service providers.

SECTION 3. Tennessee Code Annotated, Section 65-4-101(8), is amended by deleting the language "paging service, or communications service" and by substituting instead the language "paging service, interconnected VoIP service, or communications service".

SECTION 4. Tennessee Code Annotated, Section 65-4-101, is amended by adding the following language as a new, appropriately designated subdivision:

() "Interconnected VoIP service" means an interconnected Voice over Internet protocol (VoIP) service that:

- (A) Enables real-time, two-way voice communications;
- (B) Requires a broadband connection from the user's location;
- (C) Requires Internet protocol-compatible customer premises equipment (CPE); and

(D) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

SECTION 5. Tennessee Code Annotated, Section 65-5-107(b)(8), is amended by deleting subdivision (B) in its entirety and by redesignating subdivision (C) as subdivision (B).

SECTION 6. Tennessee Code Annotated, Section 65-5-108, is amended by deleting the section in its entirety and by substituting instead the following:

§ 65-5-108.

(a) The services of an incumbent local exchange telephone company who applies for price regulation under § 65-5-109 are classified as follows:

(1) "Basic local exchange telephone services" are telecommunications services which are comprised of dial tone, touch-tone and usage provided to the premises for the provision of two-way switched voice or data transmission over facilities of residential customers within a local calling area, Lifeline, Link-Up Tennessee, 911 Emergency Services and educational discounts existing on the date the incumbent local exchange telephone company applies for price regulation. These services shall, at a minimum, be provided at the same level of quality as is being provided on the date the incumbent local exchange telephone company applies for price regulation. Rates for these services shall include both recurring and nonrecurring charges; and

(2) "Interconnection services" as defined under § 65-4-101.

(b) The authority, after notice and opportunity for hearing, may find that the public interest and the policies set forth in this part are served by exempting a service or group of services from all or a portion of the requirements of this part. Upon making such a finding, the authority may exempt telecommunications service providers from such requirements as appropriate. The authority shall in any event not have regulatory

jurisdiction over a telecommunications product or service for which existing and potential competition is an effective regulator of the price of those products or services.

(c) The authority shall not have regulatory jurisdiction over the intrastate telecommunications services of incumbent local exchange telephone companies subject to price regulation that do not fall within the definition of basic local exchange telephone services or interconnection services or an incumbent local exchange telephone company's basic local exchange telephone services in any exchange that meets the criteria established in § 65-37-105. In addition, the authority shall not have regulatory jurisdiction over products or services the authority has found to be subject to effective competition pursuant to subsection (b) or the retail offering of combinations or bundles of products or services as provided in § 65-37-103(a). In not asserting its regulatory jurisdiction, the authority shall not apply the pricing, tariffing or non-discrimination provisions of §§ 65-5-101, 65-5-109, 65-5-102, 65-5-103, and 65-5-104, or related authority rules to the applicable products, services or local exchanges. Moreover, the authority shall not require such entities to report on or otherwise comply with authority rules or requirements relating to retail service quality, end-user billing or retail terms and conditions governing the provision of the applicable products, services or local exchanges.

SECTION 7. Tennessee Code Annotated, Section 65-5-109, is amended by deleting the section in its entirety and by substituting instead the following language:

§ 65-5-109.

(a) Rates for basic local exchange telephone services and interconnection services are just and reasonable when they are determined as set forth in this section.

(b) An incumbent local exchange telephone company subject to price regulation shall be empowered to and shall charge and collect only such rates that are less than or

equal to the maximum permitted by this section. Incumbent local exchange telephone companies that adopted price regulation before January 1, 2008, are not required to re-apply for price regulation under subsection (c). An incumbent local exchange telephone company not subject to price regulation as of January 1, 2008, must apply for and receive approval under subsection (c) in order to set rates under this section.

(c) The authority shall enter an order within ninety (90) days of the application of an incumbent local exchange telephone company implementing a price regulation plan for such company. With the implementation of a price regulation plan, the incumbent local exchange telephone company's rates existing on the date of its application for all basic local exchange telephone services and interconnection services, as defined in § 65-5-108, are deemed just and reasonable and shall be the initial rates on which its price regulation plan is based. The earnings of incumbent local exchange telephone companies operating under rate of return regulation that apply for price regulation under this section shall not be considered when setting initial rates under this section.

(d) A price regulation plan shall maintain just and reasonable basic local exchange telephone service and interconnection service rates by permitting a maximum annual adjustment that is capped at the percentage change in inflation for the United States using the gross domestic product-price index (GDP-PI) from the preceding year as the measure of inflation. An incumbent local exchange telephone company may adjust its rates for basic local exchange telephone services or interconnection services only so long as its aggregate revenues for basic local exchange telephone services or interconnection services generated by such changes do not exceed the aggregate revenues generated by the maximum rates permitted by its price regulation plan.

(e) Notwithstanding the annual adjustments permitted in subsection (d), the initial basic local exchange telephone service and interconnection service rates of an

incumbent local exchange telephone company that was not subject to price regulation before January 1, 2008, shall not increase for a period of one (1) year from the date the incumbent local exchange telephone company becomes subject to such regulation.

(f) Nothing in subsection (d) or (e) shall be construed to prohibit or limit basic local exchange rate increases or aggregate revenues caused by:

(1) Revenue neutral rate proposals that rebalance access revenue or touchtone revenue to basic local exchange service;

(2) Revenue neutral rate proposals that expand local calling areas;

(3) Revenue neutral rate proposals that the authority finds to be in the public interest; or

(4) Rate regrouping when it is based on population growth or expanded local calling such that there is an increase in the number of lines that end-users within the rate group can reach by local calling and the rate group no longer corresponds to the rate group definitions in a carrier's approved tariffs.

(g) Upon filing by a telecommunications service provider of a complaint concerning a basic local exchange telephone service or an interconnection service rate adjustment, such rate adjustment shall become subject to authority review for the limited purpose of ensuring the adjustment's compliance with this section. The authority shall stay the adjustment of rates and enter a final order approving, modifying or rejecting such adjustment within thirty (30) days of the complaint.

(h) Incumbent local exchange telephone companies subject to price regulation are not required to seek regulatory approval of their depreciation rates or schedules.

(i) An incumbent local exchange telephone company that meets the definition of a "rural telephone company" under 47 USC § 153 (37) does not waive any rights existing under the Telecommunications Act of 1996 by entering into price regulation under this

section. Price regulation under this section shall not be construed to be a waiver of the rural exemption existing under 47 USC § 251(f)(1) or the protection afforded under 47 USC § 251(f)(2).

SECTION 8. Tennessee Code Annotated, Section 65-5-110, is amended by deleting subsection (e) in its entirety and by substituting instead the following language:

(e) After July 1, 2008, §§ 65-4-109, 65-4-110, 65-4-112 and 65-4-113 shall not apply to incumbent local exchange telephone companies subject to price regulation.

(f) After July 1, 2011, the authority shall not have regulatory jurisdiction over the products or services of any incumbent local exchange telephone company subject to price regulation; provided, however, nothing in this subsection (f) shall alter the authority's ability to regulate telecommunication service providers' provision of interconnection services as defined under § 65-4-101. After July 1, 2011, the authority shall not apply the pricing, tariffing or non-discrimination provisions of §§ 65-5-101, 65-5-109, 65-5-102, 65-5-103 and 65-5-104 or related authority rules to the products and services of incumbent local exchange telephone companies. Moreover, the authority shall not require incumbent local exchange telephone companies to report on or otherwise comply with authority rules or requirements relating to retail service quality, end-user billing or retail terms and conditions governing the provision of the products and services of such entities. At any time prior to July 1, 2011, this subsection (f) shall take effect immediately for any incumbent local exchange telephone company where the authority finds that fifty percent (50%) or more of that incumbent local exchange telephone company's total subscriber access lines are in exchanges that meet the criteria set out in § 65-37-105.

(g) Nothing in Acts 1995, ch. 408 shall be construed to affect the assessment for ad valorem taxation of property used to provide telecommunications services, and to that

end it is declared that the fifty-five percent (55%) level of assessments shall remain applicable to property used in whole or in part to provide telecommunications services other than cellular telephone services, radio common carrier services, or long distance telephone services.

SECTION 9. Tennessee Code Annotated, Section 65-37-101, is amended by deleting subsection (b) in its entirety and by substituting instead the following:

(b) To implement the policy articulated in this section and to encourage low prices, notwithstanding any other law, all telecommunications providers shall be permitted to offer promotional incentives for telecommunications services, including rebates and free service offerings.

SECTION 10. Tennessee Code Annotated, Section 65-37-102, is amended by adding the following language as a new subsection:

(c) Where the authority's regulatory jurisdiction for telecommunications services have been removed pursuant to § 65-5-108(b) or (d), § 65-37-103(a) or § 65-37-105(a), price differences among retail customers of those services not attributable to race, creed, color, religion, sex or national origin shall be, for the purposes of this title, conclusively presumed to be the function of the competitive market and no complaint for discriminatory pricing shall exist before the authority.

SECTION 11. Tennessee Code Annotated, Section 65-37-103(a)(1), is amended by deleting the language "shall not assert regulatory jurisdiction" in the second sentence of the subdivision and by substituting instead the language "shall not have regulatory jurisdiction" and by adding the following language at the end of the subdivision:

The authority shall not apply the pricing, tariffing and non-discrimination provisions of §§ 65-5-101, 65-5-109, 65-5-102, 65-5-103 and 65-5-104 or related authority rules to combinations or bundles of products or services. Moreover, the authority shall not

require any reporting or compliance with authority rules or requirements relating to retail service quality, end-user billing or retail terms and conditions governing the provision of combinations or bundles of products or services.

SECTION 12. Tennessee Code Annotated, Section 65-37-103(f), is amended by deleting the last sentence of the subsection and by substituting instead the following:

Revenue for telecommunications services provided in combinations or bundles shall be considered regulated revenue for purposes of rate of return rate analysis but not price regulation under § 65-5-109.

SECTION 13. Tennessee Code Annotated, Title 65, Chapter 37, is amended by adding the following language as a new section:

§ 65-37-105.

(a)

(1) Beginning July 1, 2008, the authority shall not have regulatory jurisdiction over the basic local exchange telephone services, as defined in § 65-5-108, of incumbent local exchange telephone companies subject to price regulation under § 65-5-109 in any exchange where two (2) or more non-affiliated entities, neither of which are affiliated with the incumbent local exchange telephone company, are providing local voice service in the exchange to one (1) or more retail customers.

(2)(A) For purposes of this section, "local voice service" means two-way voice service capable of receiving calls from providers of basic local exchange telephone service, regardless of the technologies used, and shall specifically include interconnected VoIP Services.

(B) The non-affiliated entities shall provide local voice service in the exchange, in whole or in part, by way of the entity's own facilities.

(C) Commercial mobile radio service shall be considered an offering of local voice service, provided that only one (1) non-affiliated entity offering such service shall be considered as offering local voice service in an exchange.

(D) A provider of local voice service need not be subject to either certification or regulation by the authority.

(b) Whenever two (2) or more non-affiliated entities are offering local voice service to retail customers in one (1) of its exchanges, the incumbent local exchange company may file a notice with the authority informing that the exchange is no longer subject to the authority's regulatory jurisdiction pursuant to subsection (a).

(c) The authority shall not apply the pricing, tariffing or non-discrimination provisions of §§ 65-5-101, 65-5-109, 65-5-102, 65-5-103 and 65-5-104 or related authority rules to the basic local exchange telephone services of the incumbent local exchange company in the exchange. Moreover, the authority shall not require any reporting or compliance with authority rules or requirements relating to retail service quality, end-user billing or retail terms and conditions governing the provision of basic local exchange telephone service in the exchange.

(d) An incumbent local exchange company's interconnection services, Lifeline/link-up services and E911 services shall remain subject to authority regulation, notwithstanding this section.

(e) Unless otherwise agreed by the end-user, the terms and conditions established by tariffs or other filings at the authority for services removed from the authority's jurisdiction pursuant to this section shall remain effective as to end-users who have selected such products or services prior to such removal for the duration of a term selected by the end-user. If no term is selected by the end-user for the products or

services, or if no term limit applied to such products or services, then the terms and conditions governing the products or services immediately prior to removal of the authority's jurisdiction shall remain in effect until the end-user agrees or elects otherwise or until the end-user is provided notice of a change in terms by the service provider.

Terms and conditions originally established by approved tariffs, which are changed and noticed to customers subsequent to removal of the authority's jurisdiction shall bind end-users. End-users who terminate service within thirty (30) days of issuance of the notice of a change in such terms and conditions shall not be affected by such changed terms and conditions for the period between issuance of the notice and termination of service.

SECTION 14. Tennessee Code Annotated, Title 65, Chapter 37, is amended by adding the following language as a new section:

§ 65-37-106.

(a) An incumbent local exchange telephone company is not obligated to provide basic local exchange telephone service, or any other communications service, to customers in a multi-tenant business or in a residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, when the owner or developer thereof:

(1) Permits only one (1) communications service provider to install its facilities or equipment used to provide voice, data or cable television service, to the exclusion of the incumbent local exchange telephone company, during the construction phase of the property;

(2) Accepts or agrees to accept incentives or rewards from a communications service provider that are contingent upon the provision of communications service by one (1) or more communications service providers to the exclusion of the incumbent local exchange telephone company;

(3) Collects from the occupants or residents of the property charges for the provision of communications service, provided by a communications service provider other than the incumbent local exchange telephone company, to the occupants or residents in any manner, including, but not limited to, collection through rent, fees, or dues; or

(4) Enters into an agreement with a communications service provider which grants incentives or rewards to such owner or developer contingent upon restriction or limitation of the incumbent local exchange telephone company's access to the property.

(b) An incumbent local exchange telephone company is not obligated to provide basic local exchange telephone service, or any other communications service, to a customer in a multi-tenant business or in a residential property, including, but not limited to, apartments, condominiums, subdivisions, office buildings, or office parks, when the customer may obtain basic local exchange telephone service or any other communications service from another provider.

(c) For the purposes of this section:

(1) "Communications service" means:

(A) Telecommunications service (as defined in 47 U.S.C. 153(46));

(B) Information service (as defined in 47 U.S.C. 153(20)).
Information service includes video service, broadband service, advanced services (as defined in 47 CFR 51.5); and

(C) Interconnected VoIP Service;

(2) "Communications service provider" means any person or entity providing communications services, any person or entity allowing another person

or entity to use its communications facilities to provide communications services, or any person or entity securing rights to select communications service providers for a property owner or developer; and

(3) "Owner or developer" means the owner or developer of a multi-tenant business or residential property, any condominium association or homeowners' association thereof, or any other person or entity having ownership in or control over the property.

(d) Any incumbent local exchange telephone company relieved of its obligation to provide basic exchange local telephone service, or any other communications service, pursuant to this section shall notify the authority of that fact in a timely manner, citing to the conditions in subsection (a) or (b) supporting the relief.

(e) If the conditions of subsection (a) or (b) are not met, then an incumbent local exchange telephone company may petition the authority for relief from its obligation to provide basic local exchange telephone service, and any other communications service, based upon good cause shown. The authority shall give due consideration to the facts and circumstances of providing basic local exchange telephone service or other communication service to the multi-tenant business or residential property. Notice shall be given to the relevant building owner or developer by the incumbent local exchange telephone company at the time the petition is submitted. The authority shall have ninety (90) days to act on the petition.

(f) If the conditions described in subsection (a) cease to exist at a property, and the owner or developer requests in writing that the incumbent local exchange telephone company make service available to customers at the property and confirms in writing that all conditions described in subsection (a) have ceased to exist at the property and the owner or developer has not arranged and does not intend to arrange with another

communications service provider to make communications service available to customers at the property, the authority may, after opportunity for hearing, require the incumbent local exchange telephone company to provide basic local exchange telephone service at the property; provided, however, that the incumbent local exchange telephone company may require that the owner or developer pay to the company in advance a reasonable fee to recover costs that exceed the costs that would have been incurred to construct or acquire facilities to serve customers at the property initially, and the company shall have a reasonable period of time following the request from the owner or developer to make arrangements for service availability. If any conditions described in subsection (a) again exist at the property, then subsection (a) shall again apply.

(g) Where an incumbent local exchange telephone company is obligated to provide basic local exchange telephone service pursuant to subsection (f), the incumbent local exchange telephone company may fulfill that obligation using any technology, and may provide that service under rates, terms and conditions, of the incumbent's choosing.

SECTION 15. Tennessee Code Annotated, Title 65, Chapter 37, is amended by adding the following language as a new section:

§ 65-37-107.

(a) Interconnected VoIP service shall be subject to exchange access charges to the same extent that telecommunication services are subject to such charges.

Exchange access charges include switched access and other similar charges that allow a telecommunications service provider to interconnect with the networks of all other telecommunications service providers.

(b) All traffic shall include signaling information or call detail records to enable other carriers with whom such traffic is exchanged to identify the points of origination and termination of the traffic and the financially responsible parties for such traffic, including the interconnected VoIP service provider and, where applicable, the carrier transporting the interconnected VoIP service traffic to the public switched telephone network.

(c) The authority shall require payment of exchange access charges regardless of whether a provider of telecommunications service has been issued a certificate by or is otherwise within the jurisdiction of the authority.

SECTION 16. Tennessee Code Annotated, Title 65, Chapter 37, is amended by adding the following language as a new section:

§ 65-37-108.

As used in this chapter, unless the context otherwise requires, "interconnected VoIP Service" is interconnected Voice over internet protocol (VoIP) service that:

- (1) Enables real-time, two-way voice communications;
- (2) Requires a broadband connection from the user's location;
- (3) Requires internet protocol-compatible customer premises equipment (CPE); and
- (4) Permits users generally to receive calls that originate on the public switched telephone network and to terminate calls to the public switched telephone network.

SECTION 17. This act shall take effect upon becoming a law, the public welfare requiring it.